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PLEASE RESPOND TO WASHINGTON ADDRESS

February 28, 2017

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation:
WC Docket No. 15-69, Petition for Limited, Expedited Waiver By Westelcom
Network, Inc. of Section 61.26(a)(6) of the Commission's Rules

Dear Ms. Dortch:

On February 24, 2017, Paul F. Barton, President of Westelcom Network, Inc. ("Westelcom" or the "Company"), along with the undersigned, met separately regarding the above-captioned matter with: Mr. Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn; Dr. Jay Schwarz, Acting Wireline Advisor to Chairman Pai; and Ms. Amy Bender, Legal Advisor to Commission O'Rielly. At each of these meetings, and as outlined below, we summarized the need for a prompt grant of Westelcom's Petition for Limited Expedited Waiver filed in this proceeding (the "Petition") as modified by the Company's November 10, 2016 Ex Parte (which contained a compromise proposal for the requested relief in this proceeding (the "Compromise Proposal")). The attached ex partes were referenced and provided in each meeting. Later that day, Mr. Barton and I had the opportunity to discuss these same issues with and Mr. Nicholas Degani, Senior Counsel to Chairman Pai.

In these meetings, the Company pointed out that its Petition had been filed two years ago and had been on circulation since December 28, 2016. During this time, the Company, to the extent it could, has been trying to address the negative impacts arising from the rate shock imposed by the flash cut of Westelcom's interstate switched access rates by over ninety-five percent (95%) (the "Flash Cut"),¹ while, at the same time, attempting to maintain its competitive

¹ In lieu of rate flash cuts, the Commission provided to all Local Exchange Carriers the ability to rely upon a reasonable transition of their interstate switched access rates was an underlying policy objective of the FCC in its 2011 *Transformation Order*. See *In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), ¶¶ 798-807, *aff'd* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. denied* ("Transformation Order").

position.² Notwithstanding these efforts, the net effect upon the Company in not receiving relief has significantly diminished the Company's ability to maintain, upgrade and expand its physical plant and network connectivity, as well as to hire additional support and engineering staff. The delay has also added risk to both the Company and its customers comprised of over 100 health care facilities, telemedicine networks, multiple municipalities, and educational facilities in its over 3,000 rural customer base.³

The delays in granting the Company relief from the Flash Cut moved the Company to agree to the compromise contained in its November 2016 ex parte. The Compromise Proposal, if adopted, would allow the Company to transition to Price Cap rates and rate structures applicable to its operations while providing a level of relief that is anticipated to allow the Company to stabilize its operations. This stabilizing effect of the Compromise Proposal lessens as more time lapses, and is otherwise based on the *entirety* of the resulting rate levels and rate structure outlined in the Compromise Proposal. Thus, for example, the transport rate elements in the Compromise Proposal represent as a general matter approximately 60% of the relief that would be afforded the Company. Consequently, in the event that such transport rates were modified, any revenue reduction, in turn, would raise the same types of concerns as those applicable to the overall Flash Cut: destabilization of the Company's operations that the Compromise Proposal is aimed at avoiding. The Company noted, however, that any modification of such transport rates is unnecessary as the only party substantively challenging the Company's relief – AT&T Services, Inc. ("AT&T") – has agreed that it would not oppose tailored relief to the Company.

Specifically, even though AT&T made claims that the Company demonstrated did not apply to its operations, AT&T nonetheless stated that "[t]o the extent the Commission is persuaded to grant Westelcom's request, the Commission should carefully craft the language of any waiver order to avoid opening a significant loophole and potentially encouraging arbitrage."⁴ Thus, if the transport rate levels proposed in the original Petition raised issues, AT&T would not

² In its discussions, the Company noted its understanding that its two primary competitors – Verizon New York, Inc. ("Verizon") and Time Warner Cable -- were not subject to the Flash Cut experienced by the Company. Moreover, it is questionable the degree to which, for example, Verizon shares the Company's commitment to provide advance services and upgraded network capacity in the rural Adirondack North Country area, based on Verizon's decision not to elect Connect America Fund disbursements. See, e.g., *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Order*, WC Docket Nos. 10-90 and 14-58, FCC 17-2, released January 26, 2017.

³ As noted in the Petition, the Company interconnects to over 100 hospitals, clinics and practices in the Adirondack North Country (*Petition* at 5, n.20), while also serving a significant number or broadband, local dial tone and long distance customers. See Confidential Attachment A-1.

⁴ Comments of AT&T Services, Inc., WC Docket No. 15-69, filed April 24, 2015 at 6, n.30.

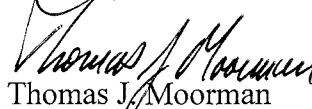
Marlene H. Dortch
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Page -3-

have agreed to a tailored waiver grant, but it did. So too, now that the originally requested relief in the Petition has been replaced by the Compromise Proposal's reduced scope of relief, any concerns regarding rate levels have also dissipated.

In summary, any additional delays in granting the Company relief as outlined in the Compromise Proposal further diminishes the Company's ability to compete and adds to the on-going risk to the Company and its customers. Therefore, a prompt grant of the Compromise Proposal advances competitive parity (among other benefits) by allowing Westelcom (per the *Transformation Order*) to have a reasonable transition of its interstate switched access rates rather than operating under the confines of the Flash Cut. The tailored phase down within the Compromise Proposal, reflects among other matters: (1) the specific set of circumstance confronting the Company; (2) the willingness of the Company to continue its commitment to provide necessary voice and broadband services to the rural higher cost to serve areas in upper New York State; and (3) fundamental fairness to the Company vis-à-vis its competitors which never confronted the Flash Cut that the Company has experienced.

Accordingly, for all of the reasons set forth herein, its prior submissions in this proceeding, and the bipartisan support of the relief Westelcom seek as reflected in the *Capitol Hill Bipartisan Support Letters*,⁵ Westelcom respectfully requests that the Commission promptly grant the Company relief as reflected in the Compromise Proposal. This letter is being filed pursuant to Section 1.1206 of the Commission's rules. Please direct any inquiries regarding this matter to the undersigned.

Sincerely,



Thomas J. Moorman
Counsel to Westelcom Network, Inc.

Attachments

cc: Nicholas Degani (via email)
Jay Schwarz (via email)
Amy Bender (via email)
Claude Aiken (via email)
Paul Barton (via email)

⁵ See Letter from the Honorable Kirsten Gillibrand, United States Senator, and the Honorable Chuck Schumer, United States Senator, to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, dated February 18, 2016 and Letter from the Honorable Elise M. Stefanik, United States Representative from the 21st District of New York, to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, dated March 22, 2016 (collectively the "*Capitol Hill Bipartisan Support Letters*").

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November 10, 2016

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Written Ex Parte Presentation:
WC Docket No. 15-69, Petition for Limited, Expedited Waiver By Westelcom
Network, Inc. of Section 61.26(a)(6) of the Commission's Rules

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b)(2), Westelcom Network, Inc. ("Westelcom" or the "Company") hereby submits this written ex parte letter regarding its "Petition for Limited, Expedited Waiver By Westelcom Network, Inc. of Section 61.26(a)(6) of the Commission's Rules" (the "Petition") filed in the above-captioned matter. For approximately twenty (20) months, Westelcom has sought relief arising from the March, 2012 Census Bureau's ("CB's") reclassification of Watertown, New York as a new urbanized area. As a result of the CB's reclassification,¹ the Company is no longer afforded the status of a "rural CLEC" under the applicable Commission tariffing rules and therefore has experienced a "flash-cut" ninety-six percent (96%) reduction in the Company's interstate switched access revenues.

As the record reflects, this flash-cut reduction runs counter to the "reasonable transition" policies established in 2001 for entities like Westelcom, policies reaffirmed for all carriers like Westelcom in 2011.² At the same time, the fact rich record in this proceeding reflects that a

¹ When the CB undertook its re-classification action, it specifically recognized that entities, like the Commission, should evaluate their reliance on the CB's classification actions in connection with the enforcement of the entities' policies (*see* Petition at 16), urging agencies when "considering the appropriateness of the classification for use in a nonstatistical program . . . to consider permitting appropriate modifications of the results of implementing the urban-rural classification specifically for the purposes of its program." 76 Fed. Reg. 53030 (Aug. 24, 2011).

² *See generally In the Matter of Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262, 16 FCC Rcd 9923 (2001) ("Seventh Report and Order") at ¶¶ 4, 6, 37, and 62; *In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff'd* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. denied* (the "Transformation Order"), at ¶¶ 798-807; *see also* Petition at 13-14, 19.

grant of relief to Westelcom advances not only the deployment of fiber-based advanced network services but also advances the Commission's telehealth/telemedicine policies.³

Westelcom is not alone in its concerns regarding the absence of prompt action granting the relief requested in the Petition.⁴ The record reflects that each of these officials support the prompt grant of the relief that the Company seeks. And, equally important is the fact that their uniform support for the Company's requested relief is *bipartisan*. Unfortunately, however, delay in Commission action granting the Petition and thus compounding the continuing real-world effect of the improper flash-cut experienced by the Company, has resulted in Westelcom having the need to operate under "austere" budgets,⁵ a situation that becomes all the more difficult to satisfactorily address with every day that lapses without Commission relief.⁶ These resulting negative effects on the Company's operations in the rural North Country Adirondack area are even more difficult to explain in light of the limited opposition to what the Company seeks.⁷

Unquestionably, the Company continues to believe that relief allowing Westelcom to operate under the Commission's tariffing rules as a rural CLEC is in the public interest and advances sound public policy. Nonetheless, the Company respectfully submits that the operational challenges confronting it require Commission action on the Petition as soon as possible. And, with this in mind, the Company offers the following compromise.

³ See, e.g., Petition at 4-6, 10, 14-15.

⁴ See Letter from the Honorable Kirsten Gillibrand, United States Senator, and the Honorable Chuck Schumer, United States Senator, to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, dated February 18, 2016 (the "*NY Senators' Letter*"); Letter from the Honorable Elise M. Stefanik, United States Representative from the 21st District of New York, to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, dated March 22, 2016 ("*Representative Stefanik's Letter*"). These letters were attached to ex partes filed by the Company. See Notice of Ex Parte, WC Docket No. 15-69, filed June 3, 2016; see also Notice of Ex Parte, WC Docket No. 15-69, filed March 8, 2016 (attaching the *NY Senators' Letter*). *Representative Stefanik's Letter* was submitted separately and filed in the Commission's Electronic Comment Filing System.

⁵ *Representative Stefanik's Letter* at 2.

⁶ See Notice of Ex Parte, WC Docket No. 15-69, filed October 26, 2016 at 1.

⁷ In this regard, the only affirmative opposition to the Petition has been expressed by AT&T Services, Inc. ("AT&T"), albeit effectively mirrored in its entirety by CenturyLink in its May 11, 2015 reply comments. While the Company in its reply comments has amply demonstrated that AT&T's position (and thus also CenturyLink's position) should not delay a grant of the Petition, Westelcom notes that AT&T nonetheless stated that "[t]o the extent the Commission is persuaded to grant Westelcom's request, the Commission should carefully craft the language of any waiver order to avoid opening a significant loophole and potentially encouraging arbitrage." Comments of AT&T Services, Inc., WC Docket No. 15-69, filed April 24, 2015 at 6, n.30.

In a manner generally consistent with the Commission's action establishing the original transition for companies in its *Seventh Report and Order*, if a compromise along the following lines would advance the timing of a decision that grants relief to the Company, Westelcom would be willing to accept it. Thus, under this compromise proposal, the Company would be able to transition its interstate switched access rates using the following phase-down:

- (1) The Company would assess the applicable originating and terminating National Exchange Carrier Association, Inc. ("NECA") Tariff F.C.C. No. 5 rates using the NECA rate structure as provided for in 47 C.F.R. § 61.26(e) from the date of the Order (subject to the effective date of a tariff filing by the Company implementing the Commission's directive) through June 30, 2017.
- (2) For each of the next three tariff years (July 1, 2017 through June 30, 2018 ("Tariff Year 1"), July 1, 2018 through June 30, 2019 ("Tariff Year 2"), and July 1, 2019 through June 30, 2020 ("Tariff Year 3")), the Company's tariff filings would be subject to the timing requirements established in 47 C.F.R. §61.26(c).⁸
- (3) For Tariff Year 1, the Company would reduce its originating and terminating interstate switched access rates by twenty-five percent (25%) of the difference between the then current NECA rates and the then comparable Price Cap rates applicable to non-rural Competitive Local Exchange Carriers ("CLECs") that do not own the tandem as otherwise established in the *Transformation Order*.
- (4) For Tariff Year 2, the Company would reduce its originating and terminating interstate switched access rates by fifty percent (50%) of the difference between the then current NECA rates and the then comparable Price Cap rates applicable to non-rural CLECs that do not own the tandem as otherwise established in the *Transformation Order*.
- (5) For Tariff Year 3, the Company would reduce its originating and terminating interstate switched access rates by seventy-five percent (75%) of the difference between the then current NECA rates and the then comparable Price Cap rates applicable to non-rural CLECs that do not own the tandem as otherwise established in the *Transformation Order*.

⁸ See 47 C.F.R. § 61.26(c) ("The benchmark rate for a CLEC's switched exchange access services will be the rate charged for similar services by the competing ILEC. If an ILEC to which a CLEC benchmarks its rates, pursuant to this section, lowers the rate to which a CLEC benchmarks, the CLEC must revise its rates to the lower level within 15 days of the effective date of the lowered ILEC rate.").

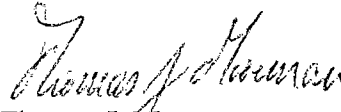
- (6) Subject to the timing requirements found in 47 C.F.R. §61.26(c), the Company would use the then comparable Price Cap interstate originating and terminating switch access rates and rate structure in each subsequent tariff year for the Company's provision of its interstate switched access services applicable to non-rural CLECs that do not own the tandem as otherwise established in the *Transformation Order*.

This compromise proposal is not optimum nor is further delay in Commission action.

Finally, the Company notes that the above proposal is based on the underlying presumption that the users of the Company's interstate switched access services (typically interexchange carriers ("IXCs")) will pay the carrier access invoices that the Company issues to such users. Any relief granted to the Company is, from a practical perspective, only beneficial if the carrier access invoices issued by the Company consistent with such relief are paid. Commission language in any decision stressing the appropriateness of this IXC conduct (*i.e.*, paying carrier access invoices based on the Commission-ordered rate structure) should, in the view of the Company, help mitigate any potential for unpaid charges by IXCs.⁹

Please direct any inquiries regarding this matter to the undersigned.

Sincerely,



Thomas J. Moorman
Counsel to the Westelcom Network, Inc.

cc: Deena Shetler (via email)
Thomas Parisi (via email)
Pamela Arluk (via email)
John Hunter (via email)
Victoria Goldberg (via email)
Edward Krachmer (via email)

⁹ In this regard, the Company understands that non-rate, good faith disputes may arise between it and one of its IXC customers, although Westelcom notes that such non-rate disputes are rare based on its experience to date. So too any language by the Commission should not preclude the Company from bringing such conduct of an IXC to the Commission's attention alleging a 47 U.S.C. §202 unlawful practice by violating a Commission order setting the rates of the Company and of the penalty provisions contained therein if found applicable.

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February 1, 2017

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Marlene H. Dortch
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Re: Notice of Written Ex Parte Presentation:
WC Docket No. 15-69, Petition for Limited, Expedited Waiver By Westelcom
Network, Inc. of Section 61.26(a)(6) of the Commission's Rules

Dear Ms. Dortch:

In response to a question raised by members of the Staff in the Pricing Policy Division of the Commission's Wireline Competition Bureau, Westelcom Network, Inc. hereby reports that, in each of the last two year calendar years (2015 and 2016), its interstate originating exchange access minutes were between fifty to sixty percent (50% to 60%) of its total interstate exchange access traffic. This letter is being filed pursuant to the requirements of 47 C.F.R. §1.1206(b)(2) of the Commission's Rules.

Please direct any inquiries to this matter to the undersigned.

Sincerely,



Thomas J. Moorman
Counsel to the Westelcom Network, Inc.

Attachment

cc: P. Arluk (via email)
E. Krachmer (via email)
P. Barton, President, Westelcom Network, Inc. (via email)